General Assembly

Committee Bill No. 147

January Session, 2007

LCO No. **3568**

*03568SB00147HS_*

Referred to Committee on Human Services

Introduced by:
(HS)

AN ACT CONCERNING THE USE OF PREFERRED DRUG LISTS AND PRIOR AUTHORIZATION REQUIREMENTS BY THE DEPARTMENT OF SOCIAL SERVICES IN THE ADMINISTRATION OF THE DEPARTMENT'S PRESCRIPTION DRUG PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 17b-274 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(a) The Division of Criminal Justice shall periodically investigate pharmacies to ensure that the state is not billed for a brand name drug product when a less expensive generic substitute drug product is dispensed to a Medicaid recipient. The Commissioner of Social Services shall cooperate and provide information as requested by such division.

(b) A licensed medical practitioner may specify in writing or by a telephonic or electronic communication that there shall be no substitution for the specified brand name drug product in any prescription for a Medicaid, state-administered general assistance **[**,**]** or ConnPACE recipient, provided (1) the practitioner specifies the basis on which the brand name drug product and dosage form is medically

necessary in comparison to a chemically equivalent generic drug product substitution, and (2) the phrase "brand medically necessary" shall be in the practitioner's handwriting on the prescription form or, if the prohibition was communicated by telephonic communication, in the pharmacist's handwriting on such form, and shall not be preprinted or stamped or initialed on such form. If the practitioner specifies by telephonic communication that there shall be no substitution for the specified brand name drug product in any prescription for a Medicaid, state-administered general assistance **[**,**]** or ConnPACE recipient, written certification in the practitioner's handwriting bearing the phrase "brand medically necessary" shall be sent to the dispensing pharmacy within ten days. A pharmacist shall dispense a generically equivalent drug product for any drug listed in accordance with the Code of Federal Regulations Title 42 Part 447.332 for a drug prescribed for a Medicaid, state-administered general assistance **[**,**]** or ConnPACE recipient unless the phrase "brand medically necessary" is ordered in accordance with this subsection and such pharmacist has received approval to dispense the brand name drug product in accordance with subsection (c) of this section.

(c) The Commissioner of Social Services shall implement a procedure by which a pharmacist shall obtain approval from an independent pharmacy consultant acting on behalf of the Department of Social Services, under an administrative services only contract, whenever the pharmacist dispenses a brand name drug product to a Medicaid, state-administered general assistance **[**,**]** or ConnPACE recipient and a chemically equivalent generic drug product substitution is available. Such requests for approval may be communicated to the independent pharmacy consultant through telephonic communication, by means of a facsimile transmission or through electronic mail. The length of authorization for brand name drugs shall be in accordance with section 17b-491a. In cases where the brand name drug is less costly than the chemically equivalent generic drug when factoring in manufacturers' rebates, the pharmacist shall dispense the brand name drug. If such approval is not granted or

denied within two hours of receipt by the commissioner of the request for approval, it shall be deemed granted and thereafter the pharmacist may refill such prescription without having to obtain approval from the department. Notwithstanding any provision of this section, a pharmacist shall not dispense any initial maintenance drug prescription for which there is a chemically equivalent generic substitution that is for less than fifteen days without the department's granting of prior authorization, provided prior authorization shall not otherwise be required for atypical antipsychotic drugs if the individual is currently taking such drug at the time the pharmacist receives the prescription. The pharmacist may appeal a denial of reimbursement to the department based on the failure of such pharmacist to substitute a generic drug product in accordance with this section.

(d) In all cases where a Medicaid, state-administered general assistance or ConnPACE recipient presents to a pharmacist a prescription for a drug requiring prior approval, but for which prior approval has not been obtained by such recipient, the Department of Social Services or any entity that administers a Medicaid managed care health plan shall:

(1) Ensure the immediate electronic authorization of up to a fifteen-day supply of the originally prescribed drug and require that the initial response to a pharmacist requesting authorization for the drug include confirmation of the availability of payment for dispensing such a temporary supply;

(2) Provide notification to the prescriber, not later than twenty-four hours after receipt of the prescription, by facsimile transmission or electronic mail, (A) that prior approval is required for the prescribed drug, (B) the specified process for obtaining prior approval, together with forms that may be transmitted electronically to obtain prior approval, (C) that a temporary supply of the prescribed drug, not to exceed fifteen days, was issued in the absence of prior approval, and (D) that identifies any alternative drugs contained on the preferred

drug lists, believed to be equally effective; and

(3) Mail written notification to the Medicaid, state-administered general assistance or ConnPACE recipient, not later than twenty-four hours after receipt of the prescription, that (A) prior approval is required for the prescribed drug, (B) a temporary supply of the prescribed drug was issued in the absence of prior approval, (C) identifies any alternative drugs contained on the preferred drug lists, believed to be equally effective, and (D) advises the recipient of the right to request a hearing, utilizing the Medicaid fair hearing process administered by the department pursuant to chapter 54.

(e) The Department of Social Services, an independent pharmacy consultant acting on behalf of the department, or any entity that administers a Medicaid managed care health plan shall provide written notice of the right to a hearing to a Medicaid, state-administered general assistance or ConnPACE recipient whenever the department, an independent pharmacy consultant acting on behalf of the department, or any entity that administers a Medicaid managed care health plan: (1) Authorizes less than the full amount or duration of the drug originally prescribed, (2) denies or terminates payment for a prescribed drug, (3) provides only a temporary supply of a prescribed drug, or (4) denies a request for prior approval of a prescribed drug. The hearing shall be conducted in accordance with the Medicaid fair hearing process and shall be administered by the department pursuant to chapter 54. The hearing shall be held not later than ten days after the date on which a request for such hearing is received, and any recipient requesting such hearing shall continue to receive the originally prescribed drug during the pendency of any such hearing.

(f) The department and each entity that administers a Medicaid managed care health plan shall, with respect to any Medicaid, state-administered general assistance or ConnPACE recipient who is utilizing a drug newly subjected to prior approval requirements shall,

prior to the implementation of such a prior approval requirement, provide a thirty-day advance written notification to such recipient and the prescriber of: (1) The impending prior approval requirement for the drug, (2) the process for obtaining such prior approval, and (3) the identity and availability of any alternative drugs believed to be equally effective for the recipient. The department and each entity that administers a Medicaid managed care health plan shall, not less than ten days prior to suspending payment for a drug being utilized without prior approval, provide separate written notice of the termination of payment for such drug to a Medicaid, state-administered general assistance or ConnPACE recipient.

[(d)**]** (g) A licensed medical practitioner shall disclose to the Department of Social Services or such consultant, upon request, the basis on which the brand name drug product and dosage form is medically necessary in comparison to a chemically equivalent generic drug product substitution. The Commissioner of Social Services shall establish a procedure by which such a practitioner may appeal a determination that a chemically equivalent generic drug product substitution is required for a Medicaid, state-administered general assistance, or ConnPACE recipient.

(h) The protections set forth in subsections (c) to (f), inclusive, of this section for Medicaid, state-administered general assistance and ConnPACE recipients shall apply equally to prior approval requirements for brand name drugs and to prior approval required due to use of preferred drug lists. The provisions of subsections (c) to (f), inclusive, of this section shall apply to any entity that administers a Medicaid managed care health plan and to fee-for-service plans administered by the department directly or for which the department has entered into a contractual arrangement for the administration of such fee-for-service plan.

Sec. 2. Subsection (g) of section 17b-274d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July*

1, 2007):

(g) The Department of Social Services and any entity that administers a Medicaid managed care health plan shall publish and disseminate the current preferred drug lists, all of their prior authorization request forms, and complete descriptions of their prior authorization processes to all Medicaid providers in the state. The Department of Social Services and any entity that administers a Medicaid managed care health plan shall publish and provide timely updates to information required to be published pursuant to this subsection on any website maintained by the department or such entity. The department shall also provide such information and timely updates to such information through the department's mailed bulletin system.

Sec. 3. (NEW) (*Effective July 1, 2007*) (a) Not later than October 1, 2007, the Department of Social Services shall enter into a contract with an organization for an independent study and survey to detect any access problems incurred by Medicaid, state-administered general assistance or ConnPACE recipients, attributable to the use of preferred drug lists by the department or an entity that administers a Medicaid managed care health plan. The study and survey shall include, but not be limited to:

(1) The number of recipients under each program and under each entity that administers a Medicaid managed care health plan who, each month for an identified six-month period, present to a pharmacy a prescription for a drug not listed on a preferred drug list without first having obtained prior authorization, who are (A) authorized to receive a temporary supply of the prescribed drug immediately, (B) prescribed a different drug in the same therapeutic class not later than fifteen days after the date of presenting the prescription, and (C) not prescribed a drug in the same therapeutic class during such fifteen-day period;

(2) The number of recipients under each program and under each

entity that administers a Medicaid managed care health plan, for an identified six-month period, whose prescribers request prior authorization for drugs not listed on a preferred drug list, whether such requests for prior authorization are granted or denied; and of those requests that are denied, the number of recipients who request hearings to challenge the denial; whose hearings are then decided in favor of the recipient, or for whom prior to the hearing decision, the decision to deny the prescribed drug is reversed;

(3) A random survey of Medicaid, state-administered general assistance and ConnPACE providers to ascertain whether they have (A) encountered any drug access problems attributable to preferred drug lists including any problems necessitating medical treatment as a result of lack of access to a drug not listed on a preferred drug list, or (B) limited their participation in any program due in whole, or in part to such problems.

(b) The Commissioner of Social Services shall report, in accordance with section 11-4a of the general statutes, on the results of the study and survey to the joint standing committees of the General Assembly having cognizance of matters relating to public health, human services and appropriations and the budgets of state agencies.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2007*	17b-274
Sec. 2	*July 1, 2007*	17b-274d(g)
Sec. 3	*July 1, 2007*	New section

Statement of Purpose:

To require the Commissioner of Social Services to implement measures that ensure that the department's prescription drug program beneficiaries are not being denied access to needed prescription drugs due to the implementation of prior authorization requirements or the utilization of preferred drug lists.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: SEN. LOONEY, 11th Dist.; SEN. PRAGUE, 19th Dist.

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